

DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16CV465-MOC
(3:97CR333-MOC-1)

LEROY JOSEPH KELLY,)
)
 Petitioner,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

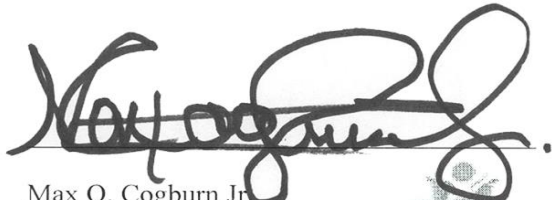
ORDER

THIS MATTER is before the Court on Petitioner’s Letter Motion to Accredit Time to State Sentence. (Doc. No. 10). In his motion, Petitioner seeks a ruling from this Court as to whether any future sentencing relief under Sessions v. Dimaya, 138 S. Ct. 1204 (2018), will affect his state sentence. Specifically, Petitioner wants to know whether if “upon hearing of [his] federal claim under Dimaya and vacation of [his] 924(c) convictions, the district court can instruct the BOP to accredit time spent under an unlawful sentence to [his] state sentence.” (Doc. No. 10 at 4).

Petitioner has not yet sought relief under Dimaya, and his current motion to vacate is being held in abeyance pending various Fourth Circuit rulings. Federal courts may not render advisory opinions. Golden v. Zwickler, 394 U.S. 103, 108 (1969). Because any ruling by the Court as to the effect of Dimaya relief on Petitioner’s state sentence would amount to an advisory opinion at this point, Petitioner’s motion will be denied.

IT IS, THEREFORE, ORDERED that Petitioner’s Letter Motion to Accredit Time to State Sentence, (Doc. No. 10), is **DENIED** without prejudice for the reasons stated in this Order.

Signed: September 26, 2018


Max O. Cogburn Jr.
United States District Judge